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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation Against:

Case No. **2010-523**

13 **LORIE STEWART**
P.O. Box 1198 #1555
14 Sacramento, CA 95812

FIRST AMENDED
ACCUSATION

15 Registered Nurse License No. 660268

16 Public Health Nurse Advanced Certification No. 70478

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
22 solely in her official capacity as the Interim Executive Officer of the Board of Registered
23 Nursing, Department of Consumer Affairs (Board).

24 2. On or about July 11, 2005, the Board issued Registered Nurse License No. 660268 to
25 Lorie Stewart (Respondent). The Registered Nurse License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

27 3. On or about August 3, 2006, the Board issued Public Health Nurse Advanced
28

1 Certification No. 70478 to Respondent. The Advanced Certification was in full force and effect
2 at all times relevant to the charges brought herein and will expire on March 31, 2011, unless
3 renewed.

4 JURISDICTION

5 4. This Accusation is brought before the Board under the authority of the following
6 laws. All section references are to the Business and Professions Code unless otherwise indicated.

7 STATUTORY PROVISIONS

8 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
9 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
10 action during the period within which the license may be renewed, restored, reissued or
11 reinstated.

12 6. Section 2052, subdivision (a), states:

13 "Notwithstanding Section 146, any person who practices or attempts to practice, or who
14 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
15 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
16 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
17 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
18 certificate as provided in this chapter or without being authorized to perform the act pursuant to a
19 certificate obtained in accordance with some other provision of law is guilty of a public offense,
20 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state
21 prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either
22 imprisonment."

23 7. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,
24 including a licensee holding a temporary or an inactive license, for any reason provided in
25 Article 3 (commencing with section 2750) of the Nursing Practice Act.

26 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not
27 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
28 to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the

1 Board may renew an expired license at any time within eight (8) years after the expiration.

2 9. Section 2761 states, in pertinent part:

3 "The board may take disciplinary action against a certified or licensed nurse or deny an
4 application for a certificate or license for any of the following:

5 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

6 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
7 functions.

8

9 (d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
11 Act] or regulations adopted pursuant to it. . . ."

12 10. Section 2762 states, in pertinent part:

13 "In addition to other acts constituting unprofessional conduct within the meaning of this
14 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
15 chapter to do any of the following:

16 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
17 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
18 administer to another, any controlled substance as defined in Division 10 (commencing with
19 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
20 defined in Section 4022.

21 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
22 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
23 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
24 himself or herself, any other person, or the public or to the extent that such use impairs his or her
25 ability to conduct with safety to the public the practice authorized by his or her license.

26

27 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
28 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this

1 section."

2 11. Section 2820 provides that nothing in Article 6.5. regarding Public Health Nurse
3 Certification shall be construed as expanding the scope of practice of a registered nurse beyond
4 that which is authorized under Section 2725 [legislative declaration, practice of nursing and
5 functions].

6 12. Section 4022 provides that a drug that can be lawfully dispensed only on prescription
7 is a dangerous drug [added by Stats. 1996, c 890 (A.B. 2802), former § 4211].

8 13. Section 4324, subdivision (a), states:

9 "Every person who signs the name of another, or of a fictitious person, or falsely makes,
10 alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any
11 drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the
12 state prison, or by imprisonment in the county jail for not more than one year."

13 REGULATORY PROVISIONS

14 14. California Code of Regulations, title 16, section 1442 states:

15 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
16 the standard of care which, under similar circumstances, would have ordinarily been exercised by
17 a competent registered nurse. Such an extreme departure means the repeated failure to provide
18 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
19 situation which the nurse knew, or should have known, could have jeopardized the client's health
20 or life."

21 COST RECOVERY

22 15. Section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 DANGEROUS DRUGS

27 16. Bactrim, an antibiotic medication, is the brand name for the generic drug combination
28 of Sulfamethoxazole and Trimethoprim and is a dangerous drug pursuant to section 4022.

1 17. Benadryl is the trade name for the drug diphenhydramine, and in a 50 mg dosage is a
2 dangerous drug pursuant to section 4022.

3 18. Keflex is a brand name for the generic drug Cephalexin and is a dangerous drug
4 pursuant to section 4022.

5 19. Motrin 600 mg is the brand name for the generic drug ibuprofen and is a dangerous
6 drug pursuant to section 4022.

7 20. Naproxen 500 mg is the generic name for a drug sold under the brand name Aleve
8 and is considered a dangerous drug pursuant to section 4022.

9 21. Rifampin is the generic name for a drug sold under the brand name Rifadin and is a
10 dangerous drug pursuant to section 4022.

11 22. Toradol is the brand name for the generic drug Ketoralac and is a dangerous drug
12 pursuant to section 4022.

13 23. On or about August 13, 2006, Respondent, a contract employee, worked as a
14 registered nurse at a health care facility (the Facility). Respondent admittedly wrote orders for
15 prescription strength medications using the name of an on-call physician in hospital records,
16 without direction of the physician, and administered the medications to patients. Respondent
17 acted independently as a practitioner of medicine without proper education or certification, or
18 supervision.

19 24. On Sunday evening on or about August 13, 2006, at about 1745 through 0615 hours,
20 Respondent worked with a physician on-call, without other medical support in the Treatment and
21 Triage Area (TTA) at the Facility. Respondent treated four (4) patients: one for dental pain, a
22 second for an infection, a third stabbing victim with a deep and long laceration, and a fourth with
23 abdominal pain. Respondent made no attempt to contact and consult the on-call physician at any
24 time during her shift regarding the patients she had treated and dispensed prescription strength
25 medications for which she used his name for authorization on the hospital records. On or about
26 August 14, 2006, the on-call physician was advised of Respondent's actions.

27 25. On or about August 13, 2006, Respondent charted prescription strength medication
28 orders on patient's hospital records, and charted the same prescription strength medications,

dangerous drugs, on TTA's summary "Documed Log," an administration drug log, as follows:

<u>Time</u>	<u>Quantity</u>	<u>Amount</u>	<u>Dangerous Drug</u>
2130	1	60 mg	Toradol
2130	2	600 mg	Motrin
2130	1	50 mg	Benadryl
2030	1	50 mg	Benadryl
2030	2	300 mg	Rifampin
2030	2	800/160mg	Bactrim
2030	2	500 mg	Naproxin
1910	2	500 mg	Keflex

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

26. Respondent is subject to disciplinary action under section 2761, subdivision (a), in conjunction with California Code of Regulations, title 16, section 1442 states, on the grounds of unprofessional conduct, in that on or about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent committed acts constituting gross negligence when she practiced medicine treating patients outside her scope of practice as a registered nurse by diagnosing, prescribing medications that have potential to do harm, and treating four (4) patients without medical orders and without a license to practice medicine, by fictitiously signing prescription medication orders on behalf of a physician, by prescribing and furnishing dangerous drugs, and by falsifying medical records. Each of Respondent's acts committed is an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 23 - 25, inclusive, as though set forth fully.

SECOND CAUSE FOR DISCIPLINE

(Practice Medicine without a License)

27. Respondent is subject to disciplinary action under section 2761, subdivision (a), in

1 conjunction with section 2052, subdivision (a), on the grounds of unprofessional conduct, in that
2 on or about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent
3 practiced medicine without a license and / or attempted to practice or treat the sick without a valid
4 certificate. Complainant refers to and by this reference incorporates the allegations set forth
5 above in paragraphs 23 - 26, inclusive, as though set forth fully.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Sign For Another, Falsely)**

8 28. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
9 conjunction with section 4324, subdivision (a), on the grounds of unprofessional conduct, in that
10 on or about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent
11 falsely charted an authorizing licensed physician's name on prescription drug orders in hospital
12 records. Complainant refers to and by this reference incorporates the allegations set forth above
13 in paragraphs 23 - 27, inclusive, as though set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Obtain / Possess / Prescribe Dangerous Drugs, Illegally)**

16 29. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
17 conjunction with 2761, subdivision (a), on the grounds of unprofessional conduct, in that on or
18 about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent obtained or
19 possessed, and / or prescribed, dangerous drugs without physician's orders. Complainant refers
20 to and by this reference incorporates the allegations set forth above in paragraphs 23 - 28,
21 inclusive, as though set forth fully.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Dangerous Drugs)**

24 30. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
25 conjunction with 2761, subdivision (a), on the grounds of unprofessional conduct, in that on or
26 about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent used
27 dangerous drugs by administering potentially harmful dangerous drug to patients without valid
28 prescriptions which use is to an extent or in a manner dangerous or injurious to others.

1 Complainant refers to and by this reference incorporates the allegations set forth above in
2 paragraphs 23 - 29, inclusive, as though set forth fully.

3 **SIXTH CAUSE FOR DISCIPLINE**

4 **(False Records)**

5 31. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
6 conjunction with 2761, subdivision (c), on the grounds of unprofessional conduct, in that on or
7 about August 13, 2006, while on duty as a registered nurse at the Facility, Respondent falsified,
8 or made grossly incorrect or grossly inconsistent entries in hospital, patient, or other records
9 pertaining to dangerous drugs. Complainant refers to and by this reference incorporates the
10 allegations set forth above in paragraphs 23 - 30, inclusive, as though set forth fully.

11 **SEVENTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 32. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and /
14 or (o), in that on or about August 13, 2006, while on duty as a registered nurse at the Facility,
15 Respondent committed acts of unprofessional conduct and / or committed acts which violated
16 adopted regulations or provisions of the Nursing Practice Act. Complainant refers to and by this
17 reference incorporates the allegations set forth above in paragraphs 23 - 31, inclusive, as though
18 set forth fully.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board issue a decision:

- 22 1. Revoking or suspending Registered Nurse License No. 660268 issued to Respondent;
23 2. Revoking or suspending Public Health Nurse Advanced Certification No. 70478
24 issued to Respondent;
25 3. Ordering Respondent to pay the Board the reasonable costs of the investigation and
26 enforcement of this case, pursuant to section 125.3; and

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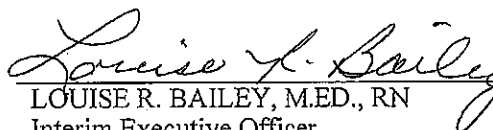
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4. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/11/10



LOUISE R. BAILEY, M.D., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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